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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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John Langenfeld

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EXAMINER

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ART UNIT

PAPER NUMBER

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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10/692,824

APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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20060512

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Notice of Non-Responsive Amendment

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission of the RCE filed on March 15, 2006, has been entered.

Nonetheless, the amendment previously filed on February 17, 2006, is non-responsive for the following reason:

The previously examined claims were drawn to a method for reducing vascularization of a BMP-2 overexpressing tumor in a subject comprising administering to a subject **having** a tumor that overexpresses BMP-2 a therapeutically effective amount of an inhibitor of an activity of BMP-2. Since Applicant has already received an action on the merits for this originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. See 37 CFR 1.142(b) and MPEP § 821.03.

Entry of the amendment filed February 17, 2006, would amend all pending claims so as to be drawn to a patentably distinct invention, namely a method for reducing vascularization of a BMP-2 overexpressing tumor (i.e., a lung tumor) in a subject comprising administering to a subject **at risk of developing** a tumor that overexpresses BMP-2 a therapeutically effective amount of an inhibitor of an activity of BMP-2.

The invention of claims 1 and 14, as would be amended, is patentably distinct from the originally presented invention because the processes are materially different processes since each comprises administering the inhibitor to a distinct population of subjects (i.e., either subjects having a tumor or subjects at risk for developing a tumor). As such, the invention of claims 1 and 14, as would be amended, is interpreted as a process for *preventing* the development of a tumor in a subject at risk for developing a tumor by administering an effective amount of the inhibitor to reduce vascularization of

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the cells that would give rise to the tumor before or during their transformation. In contrast, the originally presented invention was interpreted as a process for treating an established tumor in a subject by administering an effective amount of the inhibitor to reduce vascularization of the tumor. Consequently, the invention of claims 1 and 14, as would be amended, and the originally presented invention necessarily involve the measurement of different endpoints and are expected to have markedly different criteria for success. For all of these reasons, the invention of claims 1 and 14, as would be amended, and the originally presented invention are patentably distinct. Furthermore, because of the differences in the subject matter that would be claimed upon entry of the amendment and the subject matter encompassed by the already examined claims, entry of the amendment would require the Examiner to perform a new search, make different considerations, and raise new issues.

An amendment presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03).

It is suggested that Applicant file a continuation of the present application in order to have the merit of claims drawn to the newly presented invention considered.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen L. Rawlings, Ph.D. whose telephone number is (571) 272-0836. The examiner can normally be reached on Monday-Friday, 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms, Ph.D. can be reached on (571) 272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen L. Rawlings, Ph.D.
Examiner
Art Unit 1643

slr
May 12, 2006